

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JAMES MCAVOY, JOANNA  
MCAVOY

Plaintiffs,

v.

LOWE'S COMPANIES, INC.; and  
DOES 1-100, inclusive

Defendants.

Case No.: 2:22-cv-02417-SVW-RAO  
[Los Angeles County Superior Court  
Case No.: 22AVCV00034]

**~~PROPOSED~~ ORDER RE: JOINT  
MOTION FOR THE ENTRY OF A  
PROTECTIVE ORDER<sup>1</sup>**

[Assigned to Hon. Stephen V. Wilson,  
District Judge; Hon. Rozella A. Oliver,  
Magistrate Judge]

Complaint Filed: January 19, 2022

The Court having read the parties' Joint Motion for the Entry of a Protective Order, and good cause appearing, the Court hereby enters the following protective order:

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted.

<sup>1</sup> This Joint Motion for Protective Order is substantially based on the model protective order provided under Magistrate Judge Rozella A. Oliver's Procedures.

1 Accordingly, the parties hereby stipulate to and petition the Court to enter the  
2 following Joint Motion for Protective Order. The parties acknowledge that this Order  
3 does not confer blanket protections on all disclosures or responses to discovery and  
4 that the protection it affords from public disclosure and use extends only to the limited  
5 information or items that are entitled to confidential treatment under the applicable  
6 legal principles.

7 B. GOOD CAUSE STATEMENT

8 Federal Rules of Civil Procedure, Rule 26(c)(1) states in pertinent part, that the  
9 Court, upon a showing of good cause may “issue an order to protect a party from  
10 annoyance, embarrassment, oppression, or undue burden or expense.” Fed.R.Civ.P.  
11 26(c)(1). In the instant matter, Defendant Lowe’s Home Centers, LLC’s Confidential  
12 Documents contain proprietary and confidential trade secret information relating to  
13 Defendant Lowe’s Home Centers, LLC’s business practices and its safety protocol.  
14 Defendant Lowe’s Home Centers, LLC. (“Defendant” or “Lowe’s”) derives  
15 independent economic value from maintaining the confidentiality of the policies and  
16 procedures set forth in these Confidential Documents.

17 Defendant is a retailer in the home improvement industry and has conducted  
18 business in California since 1998. The home improvement retail industry is very  
19 competitive. As a result of years of investing time and money in research and  
20 investigation, Defendant developed the policies contained in the Confidential  
21 Documents for the purposes of maintaining the security and accessibility of its  
22 merchandise, providing quality customer service, and ensuring the safety of its  
23 employees and customers. These policies and procedures, as memorialized in the  
24 Confidential Documents, were created and generated by Lowe’s for Lowe’s, and are  
25 used for the purposes of maintaining safety at its stores and creating efficient and  
26 organized work environments for its employees. As a result, Defendant is able to  
27 minimize the waste of any resources, which is a key factor in generating profitability  
28 for its business.

Defendant derives economic value from maintaining the secrecy of its Confidential Documents. If disclosed to the public, the trade secret information contained in Defendant's Confidential Documents would reveal Defendant's internal operations and could potentially be used by competitors as a means to compete for its customers, interfere with its business plans and thereby gain unfair business advantages. If Defendant's safety protocol were revealed to the general public, it would hinder Defendant's ability to effectively resolve and minimize liability claims, and its goal of protecting its customers and employees from theft and other crimes. Unrestricted or unprotected disclosure of such information would result in prejudice or harm to Defendant by revealing Lowe's competitive confidential information, which has been developed at the expense of Lowe's and which represents valuable tangible and intangible assets. Accordingly, the parties respectfully submit that there is good cause for the entry of this Protective Order.

#### C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

There is a strong presumption that the public has a right of access to judicial proceedings and records in civil cases. In connection with non-dispositive motions, good cause must be shown to support a filing under seal. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006); *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002); *Makar-Welbon v. Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good cause showing), and a specific showing of good cause or compelling reasons with proper evidentiary support and legal justification, must be made with respect to Protected Material that a party seeks to file under seal. The parties' mere designation

1 of Disclosure or Discovery Material as CONFIDENTIAL does not—without the  
 2 submission of competent evidence by declaration, establishing that the material sought  
 3 to be filed under seal qualifies as confidential, privileged, or otherwise protectable—  
 4 constitute good cause.

5 Further, if a party requests sealing related to a dispositive motion or trial, then  
 6 compelling reasons, not only good cause, for the sealing must be shown, and the relief  
 7 sought shall be narrowly tailored to serve the specific interest to be protected. *See*  
 8 *Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item  
 9 or type of information, document, or thing sought to be filed or introduced under seal  
 10 in connection with a dispositive motion or trial, the party seeking protection must  
 11 articulate compelling reasons, supported by specific facts and legal justification, for  
 12 the requested sealing order. Again, competent evidence supporting the application to  
 13 file documents under seal must be provided by declaration.

14 Any document that is not confidential, privileged, or otherwise protectable in  
 15 its entirety will not be filed under seal if the confidential portions can be redacted. If  
 16 documents can be redacted, then a redacted version for public viewing, omitting only  
 17 the confidential, privileged, or otherwise protectable portions of the document shall be  
 18 filed. Any application that seeks to file documents under seal in their entirety should  
 19 include an explanation of why redaction is not feasible.

## 20 2. DEFINITIONS

21 2.1 Action: James McAvoy, et al. v. Lowe’s Companies Inc., et al., 2:22-cv-  
 22 02417-SVW-RAO.

23 2.2 Challenging Party: a Party or Non-Party that challenges the designation  
 24 of information or items under this Order.

25 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how  
 26 it is generated, stored or maintained) or tangible things that qualify for protection  
 27 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause  
 28 Statement.

1           2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
2 support staff).

3           2.5 Designating Party: a Party or Non-Party that designates information or  
4 items that it produces in disclosures or in responses to discovery as  
5 “CONFIDENTIAL.”

6           2.6 Disclosure or Discovery Material: all items or information, regardless of  
7 the medium or manner in which it is generated, stored, or maintained (including,  
8 among other things, testimony, transcripts, and tangible things), that are produced or  
9 generated in disclosures or responses to discovery in this matter.

10          2.7 Expert: a person with specialized knowledge or experience in a matter  
11 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
12 an expert witness or as a consultant in this Action.

13          2.8 House Counsel: attorneys who are employees of a party to this Action.  
14 House Counsel does not include Outside Counsel of Record or any other outside  
15 counsel.

16          2.9 Non-Party: any natural person, partnership, corporation, association, or  
17 other legal entity not named as a Party to this action.

18          2.10 Outside Counsel of Record: attorneys who are not employees of a  
19 party to this Action but are retained to represent or advise a party to this Action and  
20 have appeared in this Action on behalf of that party or are affiliated with a law firm  
21 which has appeared on behalf of that party, and includes support staff.

22          2.11 Party: any party to this Action, including all of its officers, directors,  
23 employees, consultants, retained experts, and Outside Counsel of Record (and their  
24 support staffs).

25          2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
26 Discovery Material in this Action.

27          2.13 Professional Vendors: persons or entities that provide litigation support  
28 services (e.g., photocopying, videotaping, translating, preparing exhibits or

demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

### 4. DURATION

Once a case proceeds to trial, information that was designated as CONFIDENTIAL or maintained pursuant to this protective order used or introduced as an exhibit at trial becomes public and will be presumptively available to all members of the public, including the press, unless compelling reasons supported by specific factual findings to proceed otherwise are made to the trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing documents produced in discovery from “compelling reasons” standard when merits-related documents are part of court record). Accordingly, the terms of this protective order do not extend beyond the commencement of the trial.

### 5. DESIGNATING PROTECTED MATERIAL

#### 5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that



1 qualifies under the appropriate standards. The Designating Party must designate for  
2 protection only those parts of material, documents, items, or oral or written  
3 communications that qualify so that other portions of the material, documents, items,  
4 or communications for which protection is not warranted are not swept unjustifiably  
5 within the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations  
7 that are shown to be clearly unjustified or that have been made for an improper purpose  
8 (e.g., to unnecessarily encumber the case development process or to impose  
9 unnecessary expenses and burdens on other parties) may expose the Designating Party  
10 to sanctions.

11 If it comes to a Designating Party's attention that information or items that it  
12 designated for protection do not qualify for protection, that Designating Party must  
13 promptly notify all other Parties that it is withdrawing the inapplicable designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in  
15 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
16 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
17 under this Order must be clearly so designated before the material is disclosed or  
18 produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (e.g., paper or electronic  
21 documents, but excluding transcripts of depositions or other pretrial or trial  
22 proceedings), that the Producing Party affix at a minimum, the legend  
23 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that  
24 contains protected material. If only a portion or portions of the material on a page  
25 qualifies for protection, the Producing Party also must clearly identify the protected  
26 portion(s) (e.g., by making appropriate markings in the margins).

27 A Party or Non-Party that makes original documents available for inspection  
28 need not designate them for protection until after the inspecting Party has indicated

1 which documents it would like copied and produced. During the inspection and before  
 2 the designation, all of the material made available for inspection shall be deemed  
 3 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants  
 4 copied and produced, the Producing Party must determine which documents, or  
 5 portions thereof, qualify for protection under this Order. Then, before producing the  
 6 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”  
 7 to each page that contains Protected Material. If only a portion or portions of the  
 8 material on a page qualifies for protection, the Producing Party also must clearly  
 9 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

10 (b) for testimony given in depositions that the Designating Party identify  
 11 the Disclosure or Discovery Material on the record, before the close of the deposition  
 12 all protected testimony.

13 (c) for information produced in some form other than documentary and for  
 14 any other tangible items, that the Producing Party affix in a prominent place on the  
 15 exterior of the container or containers in which the information is stored the legend  
 16 “CONFIDENTIAL.” If only a portion or portions of the information warrants  
 17 protection, the Producing Party, to the extent practicable, shall identify the protected  
 18 portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
 20 failure to designate qualified information or items does not, standing alone, waive the  
 21 Designating Party’s right to secure protection under this Order for such material. Upon  
 22 timely correction of a designation, the Receiving Party must make reasonable efforts  
 23 to assure that the material is treated in accordance with the provisions of this Order.

## 24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation  
 26 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
 28 process under Local Rule 37.1 et seq.



6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

## 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (d) the court and its personnel;

3 (e) court reporters and their staff;

4 (f) professional jury or trial consultants, mock jurors, and Professional

5 Vendors to whom disclosure is reasonably necessary for this Action and who have  
6 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (g) the author or recipient of a document containing the information or a  
8 custodian or other person who otherwise possessed or knew the information;

9 (h) during their depositions, witnesses, and attorneys for witnesses, in  
10 the Action to whom disclosure is reasonably necessary provided: (1) the deposing  
11 party requests that the witness sign the form attached as Exhibit A hereto; and (2) they  
12 will not be permitted to keep any confidential information unless they sign the  
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed  
14 by the Designating Party or ordered by the court. Pages of transcribed deposition  
15 testimony or exhibits to depositions that reveal Protected Material may be separately  
16 bound by the court reporter and may not be disclosed to anyone except as permitted  
17 under this Stipulated Protective Order; and

18 (i) any mediator or settlement officer, and their supporting personnel,  
19 mutually agreed upon by any of the parties engaged in settlement discussions.

20 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
21 IN OTHER LITIGATION

22 If a Party is served with a subpoena or a court order issued in other litigation  
23 that compels disclosure of any information or items designated in this Action as  
24 “CONFIDENTIAL,” that Party must:

25 (a) promptly notify in writing the Designating Party. Such notification  
26 shall include a copy of the subpoena or court order;

27 (b) promptly notify in writing the party who caused the subpoena or order  
28 to issue in the other litigation that some or all of the material covered by the subpoena

1 or order is subject to this Protective Order. Such notification shall include a copy of  
2 this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
4 the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with  
6 the subpoena or court order shall not produce any information designated in this action  
7 as “CONFIDENTIAL” before a determination by the court from which the subpoena  
8 or order issued, unless the Party has obtained the Designating Party’s permission. The  
9 Designating Party shall bear the burden and expense of seeking protection in that court  
10 of its confidential material and nothing in these provisions should be construed as  
11 authorizing or encouraging a Receiving Party in this Action to disobey a lawful  
12 directive from another court.

13 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
14 PRODUCED IN THIS LITIGATION

15 (a) The terms of this Order are applicable to information produced by a Non-  
16 Party in this Action and designated as “CONFIDENTIAL.” Such information  
17 produced by Non-Parties in connection with this litigation is protected by the remedies  
18 and relief provided by this Order. Nothing in these provisions should be construed as  
19 prohibiting a Non-Party from seeking additional protections.

20 (b) In the event that a Party is required, by a valid discovery request, to produce  
21 a Non-Party’s confidential information in its possession, and the Party is subject to an  
22 agreement with the Non-Party not to produce the Non-Party’s confidential  
23 information, then the Party shall:

24 (1) promptly notify in writing the Requesting Party and the Non-Party  
25 that some or all of the information requested is subject to a confidentiality agreement  
26 with a Non-Party;

27 (2) promptly provide the Non-Party with a copy of the Stipulated  
28 Protective Order in this Action, the relevant discovery request(s), and a reasonably

specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

#### 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

#### 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the

1 parties reach an agreement on the effect of disclosure of a communication or  
2 information covered by the attorney-client privilege or work product protection, the  
3 parties may incorporate their agreement in the stipulated protective order submitted to  
4 the court.

5 12. MISCELLANEOUS

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
7 person to seek its modification by the Court in the future.

8 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
9 Protective Order no Party waives any right it otherwise would have to object to  
10 disclosing or producing any information or item on any ground not addressed in this  
11 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
12 ground to use in evidence of any of the material covered by this Protective Order.

13 12.3 Filing Protected Material. A Party that seeks to file under seal any  
14 Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
15 only be filed under seal pursuant to a court order authorizing the sealing of the specific  
16 Protected Material at issue. If a Party's request to file Protected Material under seal is  
17 denied by the court, then the Receiving Party may file the information in the public  
18 record unless otherwise instructed by the court.

19 13. FINAL DISPOSITION

20 After the final disposition of this Action, as defined in paragraph 4, within 60  
21 days of a written request by the Designating Party, each Receiving Party must return  
22 all Protected Material to the Producing Party or destroy such material. As used in this  
23 subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
24 summaries, and any other format reproducing or capturing any of the Protected  
25 Material. Whether the Protected Material is returned or destroyed, the Receiving Party  
26 must submit a written certification to the Producing Party (and, if not the same person  
27 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by  
28 category, where appropriate) all the Protected Material that was returned or destroyed

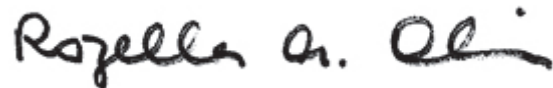
1 and (2)affirms that the Receiving Party has not retained any copies, abstracts,  
2 compilations, summaries or any other format reproducing or capturing any of the  
3 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an  
4 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
5 legal memoranda, correspondence, deposition and trial exhibits, expert reports,  
6 attorney work product, and consultant and expert work product, even if such materials  
7 contain Protected Material. Any such archival copies that contain or constitute  
8 Protected Material remain subject to this Protective Order as set forth in Section 4  
9 (DURATION).

10 14. VIOLATION

11 Any violation of this Order may be punished by any and all appropriate  
12 measures including, without limitation, contempt proceedings and/or monetary  
13 sanctions.

14  
15 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

16  
17 DATED: October 20, 2022



18 Honorable Rozella A. Oliver  
19 United States Magistrate Judge



EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_, [print or type full name] of

\_\_\_\_\_, [type or print full address]

declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on \_\_\_\_\_ [date] in the case of James McAvoy, et al. v. Lowe's Companies Inc., et al., 2:22-cv-02417-SVW-RAO, I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint \_\_\_\_\_ [full name] of \_\_\_\_\_ [full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_